

Remarks

Claims 1-42 are pending in the above-identified patent application. With this Response, claims 1, 27, 29, and 35 are amended and new claims 43-54 are added. The claim amendments are fully supported by the application as originally filed (discussed below). Upon entry of the current amendments, claims 1-54 are pending.

Because of claims previously paid for, it is believed that the only fee due for adding new claims 43-54 is for one additional independent claim. A check in the amount of \$88.00 is enclosed as the fee for an additional independent claim. If any other fee is required for adding claims, please charge the appropriate fee to the Kagan Binder Deposit Account No. 50-1775 and notify us of the same.

Applicant respectfully requests reconsideration and allowance of the application in view of the present amendments and following remarks.

Claim Rejections under 35 USC § 112

Claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as being Indefinite.

According to the Office Action:

[I]t is not clear what is intended by the limitation 'encapsulated basic ingredient' because the basic ingredient is encapsulated by the barrier material. '[sic] There is no separate barrier material and encapsulated basic ingredient.

Applicant agrees with the Office Action in that, in claim 1, the recited barrier material is not in addition to the recited encapsulated basic ingredient. That is, in claim 1, the barrier material encapsulates the basic active ingredient to form encapsulated basic active ingredient. One of skill in the art would understand this, especially in light of Applicant's specification. See, e.g., page 11, lines 17-22, of Applicant's specification as originally filed as follows:

Preferred modes of separation involve including in a bulk dough composition at least one active ingredient, especially a soluble active ingredient, present in the bulk dough composition, in the form of encapsulated particles containing active ingredient particulates coated or surrounded by, enrobed in, or suspended in, barrier material, e.g., active ingredient particulates substantially surrounded by a layer of barrier material.

Applicant respectfully submits that claim 1 is Definite under 35 U.S.C. §112, second paragraph.

Accordingly, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. §112, second paragraph be withdrawn.

Claim 1 stands rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the Written Description Requirement.

According to the Office Action:

The limitation of the 'barrier material separates encapsulated basic active ingredient' is not supported by the original disclosure. The basic material is encapsulated as a result of using the barrier material; there is no disclosure of a dough having both barrier material and a separate encapsulated basic ingredient. Claim 3 recites 'basic active ingredient encapsulated in the barrier material.' (See the Office Action at page 2).

As discussed above, Applicant agrees with the Office Action in that, in claim 1, the recited barrier material is not in addition to the recited encapsulated basic ingredient. That is, in claim 1, the barrier material encapsulates the basic active ingredient to form encapsulated basic active ingredient. Applicant respectfully submits that Applicant's originally filed specification describes this concept in sufficient detail at, e.g., page 11, lines 17-22 (see above), such that one skilled art can reasonably conclude that Applicant had possession of this concept.

Applicant respectfully submits that claim 1 satisfies the Written Description Requirement of 35 U.S.C. §112, first paragraph.

Accordingly, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. §112, first paragraph be withdrawn.

Claim Rejections under 35 USC 103(a)

Claims 1-42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kuechle et al. (U.S. Pat. No. 6,436,458) in view of Gulstad et al. (U.S. Pat. No. 3,767,421).

Applicant respectfully submits that this rejection is moot because all four independent claims 1, 27, 29, and 35, are amended to include the requirement that the recited dough composition "is refrigeration stable for a time period of twelve weeks or greater." Support for this amendment can be found in the application as originally filed at, e.g., page 4, lines 21 and 22.

The primary reference, Kuechle et al., does not teach, motivate, or suggest that its doughs can be refrigeration stable as recited in amended claims 1, 27, 29, and 35. Kuechle et al. disclose that their dough can be stable at refrigeration-type temperatures for a much lesser time-period. For example, Kuechle et al. disclose that:

After thawing, a scoopable dough of the invention can be refrigerated at temperatures of between about 30°F. and about 50°F.... until the dough begins to break down such as by, for example, the leavening system failing. The time period for refrigeration after thawing can be up to about seven days
(Underling added for emphasis).

The secondary reference, Gulstad et al., fails to cure the deficiencies of the Kuechle et al. reference. That is, the Gulstad et al. reference fails to teach, motivate, or suggest how, alone or in combination with the Kuechle et al. reference, to achieve a refrigerator stable dough composition as recited in claims 1, 27, 29, and 35.

Applicant respectfully submits that independent claims 1, 27, 29, and 35 are patentable over Kuechle et al. in view of Gulstad et al. Likewise, claims depending from claims 1, 27, 29, and 35 are patentable over Kuechle et al. in view of Gulstad et al.

Accordingly, Applicant respectfully requests that the rejection of claims 1-42 under 35 U.S.C. 103(a) as being unpatentable over Kuechle et al. in view of Gulstad et al. be withdrawn.

Added Claims

New claims 43, 45, 47, and 50, are added to depend from independent claims 1, 27, 29, and 35, respectively, and include the requirement that the dough composition is refrigeration stable such that no more than 0.46 cubic centimeters per gram of carbon dioxide is released from the dough composition over a twelve week period of storage at about 45°F. Support for this subject matter can be found in the application as originally filed at, e.g., page 7 lines 18-23.

New claims 44, 46, 49, and 52, are added to depend from independent claims 1, 27, 29, and 35, respectively, and include the requirement that the dough composition is packaged in a particular packaging. Support for this subject matter can be found in the application as originally filed at, e.g., page 25, lines 1-9.

New claims 48 and 51 are added to depend from independent claims 29 and 35, respectively, and include the requirement that the particular encapsulated active ingredient(s) is

made by an encapsulation method using a fluidized bed. Support for this subject matter can be found in the application as originally filed at, e.g., page 23, lines 3-13.

New independent claims 53 and 54 are also added. Support for new claim 53 can be found in the application as originally filed at, e.g., page 6, lines 16-29, and page 23, lines 3-13. Support for new claim 54 can be found in the application as originally filed at, e.g., page 6, line 30 to page 7, line 11, and page 23, lines 3-13.

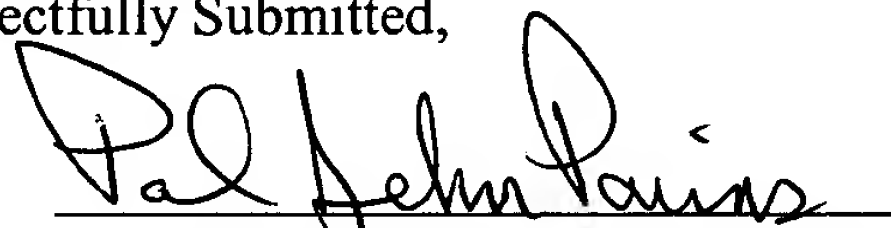
Because of claims previously paid for, it is believed that the only fee due at this time for adding claims is \$88.00 (check enclosed) for an independent claim. However, if any additional fee is required for adding claims, please charge Deposit Account No. 50-1775 and notify us of the same.

Conclusion

The Examiner is invited to contact the undersigned, at the Examiner's convenience, should the Examiner have any questions regarding this communication or the present patent application.

Respectfully Submitted,

By:



Paul John Parins, Reg. No. 54,358

Customer Number 33072

Phone: 651-275-9831

Facsimile: 651-351-2954

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